arising out of the condition or management of the wife's separate property. *Boutell v. Shellaberger* (1915) 264 Mo. 70, 174 S. W. 384; *Quilty v. Battie* (1892) 135 N. Y. 201, 32 N. E. 47; *cf. Missio v. Williams* (1914) 129 Tenn. 504, 167 S. W. 473. But as to pure torts not connected with the wife's separate property, the husband is usually still held liable. *Poling v. Pickens* (1911) 70 W. Va. 117, 73 S. E. 251, Ann. Cas. 1913 D, 995. The principal Missouri case above reported repudiates this distinction and ranges Missouri with the few states which have held the common law rule entirely abolished by emancipating legislation. It overrules earlier Missouri cases cited in the opinion. The rule laid down by the decision is, for the future, expressly established by a recent statute. Mo. Laws 1915, 269.

NEGLIGENCE—IMPUTED NEGLIGENCE—JOINT ENTERPRISE.—The plaintiff, a travelling salesman, desired to cover certain territory. Another salesman of his acquaintance intended to travel over the same territory in his own automobile, driving the car himself. It was arranged that the plaintiff should travel with him, sharing the expense. Through the negligence of the owner in driving, the automobile was struck by the defendant's train. The plaintiff was injured, and sought to recover. *Held,* that the plaintiff was barred by the driver's negligence, since they were engaged in a joint enterprise. *Derrick v. Salt Lake Ry. Co.* (1917, Utah) 168 Pac. 335.

The doctrine of imputed negligence, as formerly applied to driver and passenger, is now generally rejected, the principle being limited to cases involving some element of agency, including those of master and servant, and of joint enterprise. *Denver C. T. Co. v. Armstrong* (1912) 21 Colo. App. 640, 123 Pac. 136; *Ward v. Meeds* (1911) 114 Minn. 18, 130 N. W. 2. See also L. R. A. 1917 A, 543 and note. Whether or not an undertaking is a joint enterprise is a question of fact, and the courts are not in accord upon the definition. *Ward v. Meeds, supra; Judge v. Wallen* (1915) 98 Neb. 154, 152 N. W. 318, L. R. A. 1915 E, 436. Generally, it is considered as one in which each participant has authority to act for the other in respect to the control of the means used to execute the common purpose, and an equal right to direct the conduct of the undertaking. *St. Louis, etc., Ry. Co. v. Bell* (1916, Okla.) 159 Pac. 336; *Koplitz v. St. Paul* (1902) 86 Minn. 373, 90 N. W. 794. Thus, where two men hired a horse and buggy and jointly bore the expense, it was considered a common enterprise. *Christopherson v. Minneapolis Ry. Co.* (1914) 28 N. D. 128, 147 N. W. 791. Also, where two men were engaged in moving furniture. *Schron v. Staten I. R. R. Co.* (1897, N. Y.) 16 App. Div. 111, 45 N. Y. Supp. 124; *Cass v. Third Ave. Ry. Co.* (1897, N. Y.) 20 App. Div. 591, 47 N. Y. Supp. 356. But it has been held that a common purpose of riding for pleasure does not alone establish a joint enterprise. *Lawrence v. Sioux City* (1915) 172 Iowa 320, 154 N. W. 494; *Chicago, P. & St. L. R. v. Condon* (1905) 121 Ill. App. 440. Though the principal case is supported by *Judge v. Wallen, supra,* it would appear from ordinary experience that where one of the participants is the owner of the car, there is a tacit understanding that the vehicle is under his sole control, thus removing the essential requisite of a joint enterprise. Such a situation is manifestly different from one in which the parties jointly hire another's vehicle. An agreement to share expense would furnish some evidence on the question of joint control, but would seem not to be decisive. For this reason, the decision in the principal case seems open to question.

PRACTICE—JURY—CHALLENGE TO ARRAY AFTER CHALLENGE TO POLLS.—The defendant in a civil action assisted in the selection of the panel of jurymen for the term. The plaintiff, with knowledge of this fact, examined the talesmen

called on the *voir dire,* and after making five challenges to the polls, challenged the array. The trial judge overruled the challenge to the array on the ground that no actual harm to the plaintiff was shown. *Held,* that the challenge to the array thus made should have been upheld. *Vermont Box Co. v. Hanks* (1917, Vt.) 102 Atl. 91.

The panel may be quashed when any of the members have been summoned at the instance of either party to the action. *Co. Litt.* 156 *a; Peak v. State* (1888, Sup. Ct.) 50 N. J. L. 179, 12 Atl. 701. Or when prejudice of the summoning or selecting officer is shown. *People v. Felker* (1886) 61 Mich. 114, 28 N. W. 83. Or when the panel is not summoned or selected in the manner required by statute. See *People v. Borgstrom* (1904) 178 N. Y. 254, 70 N. E. 780. Actual harm need not be shown. *Peak v. State, supra.* The proper method of attacking the panel is by a challenge to the array. *Borrelli v. People* (1897) 164 Ill. 549, 45 N. E. 1024. But it is well settled that a prior challenge to the polls is a waiver of any absolute right to challenge the array. *Forsythe v. State* (1833) 6 Oh. 19; *Mueller v. Rebhan* (1879) 94 Ill. 142; *State v. Taylor* (1896) 134 Mo. 109, 35 S. W. 92. And the courts have held strictly to this rule where the challenge to the array was based on a deviation from the statutory regulations for selecting or summoning the panel, being averse to overthrowing a decision because of a mere irregularity. *Page v. Inhabitants* (1843, Mass.) 7 Metc. 326; *State v. Clark* (1894) 121 Mo. 500, 26 S. W. 562; and see *Bergman v. Hendrickson* (1900) 106 Wis. 434, 82 N. W. 304. But the trial court may in its discretion allow a challenge to the array, after a challenge to the poll. Thompson, *Trials* (2d ed.) sec. 113; *Cox v. People* (1880) 80 N. Y. 500. And the intervention of a party in interest in the selection of the panel furnishes good reason for relaxing the strict rule. See *McDonald v. Shaw* (1700, Sup. Ct.) 1 N. J. L. 6; *cf. People v. Felker, supra.* The principal case held, in conformity with these principles, that once the trial court had decided in its discretion to consider the belated challenge to the array, the facts of the case should have caused it to sustain the challenge.

PRINCIPAL AND SURETY—DEFENSES OF SURETY—FRAUD UPON PRINCIPAL.—The plaintiff secured by fraud a stay bond from the defendant in a former action. On default by the principal he sued the surety on the bond, who sought to set up as a defense the fraud practiced upon the principal. *Held,* that the surety could not avail himself of such a defense before the principal had elected to avoid the contract, since the principal had the option to affirm the contract and sue for damages for the fraud. *Ettlinger v. National Surety Co.* (1917, N. Y.) 117 N. E. 945.

Failure of consideration in the contract between the creditor and the principal is a good defense by the surety. *Sawyer v. Chambers* (1864, N. Y. Sup. Ct.) 43 Barb. 622; *Gunnis v. Weigley* (1886) 114 Pa. 191, 6 Atl. 465. If a surety contracts in ignorance of duress practiced upon the principal, he may plead this as a defense, since it materially increases his risk. *Patterson v. Gibson* (1888) 81 Ga. 802, 10 S. E. 9; *Osborn v. Robbins* (1867) 36 N. Y. 365. On similar grounds, if the contract of the principal is secured by fraud, the surety should not be bound. *Putnam v. Schuyler* (1875, N. Y. Sup. Ct.) 4 Hun 166; *Bryant v. Crosby* (1853) 36 Me. 562. If denied this defense the surety is of course entitled to indemnity from the principal, who must then look to the creditor in an action for the fraud. This involves a quite needless circuity of action. The court in the principal case declares that the surety cannot be allowed the defense without holding also that it would bar any further action by the principal. But this seems an unnecessary dilemma. Besides the injury to the principal, the fraud was a distinct injury to the surety, since it substantially increased the risk that he